

# Airport Leases

An Airport Owner and Management  
Reference Document

Written by the  
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## Introduction

The Wisconsin Bureau of Aeronautics created this document to serve as a resource for Wisconsin airport owners and administrators in the development of airport leases. We will address lease considerations that:

- have been impacted by recent changes in Federal Aviation Administration, (FAA) guidance material, including advisory circulars, orders and regulations
- have caused problems for Wisconsin airport owners in the past
- are issues where the Wisconsin Department of Transportation's Bureau of Aeronautics (BOA) has developed a policy, a procedure or position paper

This document, along with other printed and online materials, published by the BOA, should be considered the first step in assistance that the BOA will provide Wisconsin airport owners and management. Telephone consultation, training seminars, document review and on-site visits are other forms of assistance available from the BOA.

The BOA has a long history of providing guidance and assistance to airport owners in the management and operation of their airports. This technical assistance, outlined State Statute 114.31, *Powers and Duties of the Secretary of Transportation*, is detailed in paragraph (6) Technical Services to Municipalities.

The owner of an airport developed with State or Federal assistance has an obligation to operate it for the use and benefit of the public. The public benefit is not assured merely by keeping the runways open but requires making available suitable areas for the construction of hangars and terminal facilities. The airport owner has a duty to negotiate, in good faith, for the lease of such premises to make the airport as self-sustaining as possible and to ensure that the users of the airport contribute a fair share toward the operation of that airport.

Airport leases may involve ramp or tie down areas, hangars, land, terminal buildings, other municipally owned structures, airport land used for agricultural purposes or simply access to the airport. Airport leases will involve one or both of two groups of airport users. The first group, commercial operators, are individuals or entities that intend to provide goods or services for a profit, they are sometimes referred to as commercial tenants. The second group, non-commercial tenants, are individuals, clubs, other government agencies or others that use the airport and its facilities, for other than a profit and are referred to as simply airport tenants.

We encourage you to begin your study of airport leases on a different but related topic, Minimum Standards. We suggest that you read the BOA publication *Minimum Standards for Commercial Aeronautical Activities* and the FAA's associated Advisory Circular AC150/5190-5, *Exclusive Rights and Minimum Standards for Commercial Activities*. Both documents are available online. One can find more information about these and other references regarding leases in the Reference Section on page 12 of this document.

## Leases and Minimum Standards

Minimum standards are detailed in the following FAA references:

- FAA Order 5190.6A, Airport Compliance Handbook  
Para 3-12, Administration of Policy  
Para 3-17, Use of Minimum Standards  
Para 4-14 D (2) (e), Terms and Conditions Applied to Tenants  
Appendix 5, Definitions  
Appendix 6, Formal Compliance Inspection
- Advisory Circular 150/5190-5, Change 1, Exclusive Rights and Minimum Standards for Commercial Aeronautical Activities  
Section 2, Minimum Standards

The BOA's reference for airport owners and managers, *Minimum Standards for Commercial Aeronautical Activities* serves as a starting point for airport owners or managers writing or updating their Minimum Standards document.

We have found Minimum Standards can cause Wisconsin airport owners problems in three areas.

### **Waiving the requirements of the Minimum Standards**

Some managers and airport owners have, after developing and adopting their Minimum Standards, waive those same requirements at the request of a current or potential tenant.

Minimum Standards are, by definition, entry-level requirements for commercial operators to meet in order to operate on your airport. If you, as the airport owner set your minimums too high, you should correct that through rewriting them. Waiving the standards will only create problems in the long run for the airport owner/manager. Do not, under any circumstances, waive your Minimum Standards.

### **Changing Minimum Standards to control access to the airport**

Some airport owners may desire to allow a new tenant on the airport that cannot meet the current standards or the airport owner may want to protect a long time tenant from competition. Airport owners that rewrite their Minimum Standards for either of these reasons are doing so contrary to FAA guidance.

### **Multiple Minimum Standards applicable to various tenants**

Updates to the Minimum Standards without a tie to leases can result in vastly different standards being applicable to airport tenants. This situation can be corrected with a provision or statement in each lease. A typical statement reads: "The current, or any future, Minimum Standards adopted by (airport owner) are a part of this lease agreement. If this lease and the Minimum Standards conflict in the requirements for the lessee, the Minimum Standards takes precedence."

## **Airport Rules and Regulations**

The FAA addresses Airport Rules and Regulations in Order 5190.6A, *Airport Compliance Handbook*, in paragraph 4-7b. “The prime requirement of local regulations is to control the use of the airport in a manner that will eliminate hazards to aircraft and people on the ground.”

Local regulations are also addressed in Wisconsin State Statute 114.105, *Local Regulation*. The statute allows for local regulations to be developed with one caveat, “No local authority shall enact any ordinance governing aircraft or aeronautics contrary to or inconsistent with the provisions of this chapter or federal law.”

Local rules and regulations may include a vehicle and pedestrian ordinance (see Trans 55), air traffic patterns, security, sanitation, restriction of access to certain areas and fire protection. Other considerations for local rules may include the fueling of aircraft and storage of hazardous materials.

You may also consider developing rules regarding hangar use – what can, and possibly even more important, what cannot be stored in a hangar. Storage of cars, campers, boats and other non-aeronautical material in airport hangars have become a major problem at many Wisconsin airports. Specify hangar use requirements in the lease document, if they are not included in the airport rules and regulations.

If your airport has developed rules and/or regulations, whether in the form of ordinances or in a less formal structure, all leases should refer to those rules and regulations.

## **Economic Non-discrimination**

This lease consideration is detailed in Airport Owner Grant assurance 22, *Economic Nondiscrimination*. Airport sponsors (owners) are required, in paragraph b, to include and enforce in each lease, provisions requiring the lessee to furnish services on a reasonable and not-unjustly discriminatory basis. Further, they should charge reasonable and not-unjustly discriminatory prices for each service.

Not only must the airport owner ensure that these conditions are included in leases held by commercial tenants they, the airport owner must also meet certain non-discrimination requirements as well.

Review current leases with your commercial tenants to insure that both you and the tenant meet the non-discrimination requirements.

## **Exclusive Rights**

The FAA, as detailed in Airport Sponsor Assurances, Assurance 23, Exclusive Rights, prohibits allowing the existence of an exclusive right. Exclusive rights are discussed in detail in Advisory Circular AC150/5190-5, Section 1, *Exclusive Rights*. The FAA has concluded that exclusive rights limit the usefulness of airports and deprives the public of the benefits of competition.

Airport owners and managers can prevent exclusive rights violations through the proper use of Minimum Standards and appropriate leases. Questions regarding exclusive rights should be discussed with the BOA prior to entering into any lease.

## **Hazardous Substance Contamination**

The airport environment is fraught with hazardous substances from aviation fuels and oils to paints and solvents. Airport tenants have many opportunities to dispose of those substances in other than the preferred and most times regulated methods. In addition to addressing this topic within your airport's rules and regulations, airport owners should also include hazardous substance disposal and contamination cleanup as an item in all leases.

## **Hold Harmless**

A hold harmless provision should be included in all leases. The airport owner's legal counsel and possibly their risk management office should be consulted and asked to provide input in this area.

## **Insurance**

The airport owner and its risk management office should establish a minimum level of comprehensive liability insurance for the various types of tenants based at the airport. The insurance provider should be licensed to conduct business in Wisconsin. A copy of the policy should be filed with the airport manager. The cancellation or termination of the policy would terminate the lease.

Does your airport have a sky diving operation, club or organization as a tenant? Have individuals contacted your airport manager about using the airport as a drop zone? If so, the FAA recommends that you require parachute jumpers to hold a general liability insurance policy that names the airport as an additional insured party.

## Right to Inspect

All leases should include a Right to Inspect provision. Airport owners and their management teams must be allowed, within reason, access to leaseholds to confirm compliance with the lease, airport rules and regulations, minimum standards, and any applicable local ordinances, codes and state statutes.

Inspections should be conducted at agreed upon times and with a reasonable advance notice. Failure to permit the airport owner or representative access to the leased premises should result in termination of the lease.

This lease provision, or lack thereof, has caused problems for Wisconsin airport owners in the past. We encourage all airport owners to review the benefits of inclusion of such a provision in their leases with their legal counsel. We also recommend that the provision be discussed at length with any potential lessees at the time of lease negotiations.

## Term

The term of the lease can and has created many problems for Wisconsin airport owners and managers over the years. The FAA considers any term over 5 years a long term lease. (FAA Order 5190.6A, *Airport Compliance Handbook*, paragraph 4-18)

The BOA recommends that leases should have, as a maximum, a term of 25 – 30 years. If necessary, lease could have extensions but we recommend no more than two and for no longer than ten years each. A lease term, in excess of 45 years, is an encumbrance and is contrary to airport grant assurances. (Airport Sponsor Assurances, Assurance 5, *Preserving Rights and Powers*)

## Rent

The airport owner is required in Grant assurance 24 to “... maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self sustaining as possible under the circumstances existing ...”.

The FAA's *Airport Compliance Handbook* (Order 5190.6A), paragraph 4-14(2), states that each FBO shall be subject to the same rates, fees, rentals and other charges as are uniformly applicable to all other FBOs making the same or similar use of the airport. This is not to say that an FBO better situated or in a “prime location” could not be charged a higher fee or rent. (Order 5190.6A, 4-14d(2)(b))

Leases that are for a greater term than 5 years should have an escalation clause in them as suggested by the FAA (Order 5190.6A, paragraph 4-14d(1)(e))

## **Taxes**

All leases should include a provision addressing taxes. The lessee shall pay all taxes or assessments that may be levied against the personal property of the Lessee or buildings they erect on lands leased exclusively to them.

The airport owner might consider including in the lease what actions will be taken if the lessee defaults on its tax payments.

## **Default**

Define what you consider default to be. You might consider any of the following to be default: failure to pay rent within 30 days of due date, filing of a bankruptcy petition, making assignment for the benefit of creditors, commencement of dissolution proceedings or violations of lease provisions, minimum standards or airport rules and regulations. There may be additional definitions of default that you or your legal counsel would want to apply.

## **Snow Removal**

All leases should address who is responsible for snow removal and where that responsibility begins and ends. After determining where snow removal responsibility begins a statement of priority in removing snow must be made. Runways are always the first priority followed by taxiways and then public ramp areas.

After clearing the highest priority areas clearing access to non-commercial tenants begins. How you determine which tenant has a higher priority is up to you. A general statement should be in every lease stating that snow removal operations for tenants are secondary to the runways, taxiways and public ramps. Commercial tenants may provide for their own snow removal in their leased areas.

## **Lease Transfer**

Will you allow the lease to be transferred? Do you want a say in whom the lease can be transferred to? Do you have a waiting list of potential hanger lessees? Do you require potential commercial tenants to apply with business data prior to entering into a lease? All of these questions and more should be considered as you develop your lease document in regards to lease transfer.

## **Airport Development**

Long-range plans along with the Airport Layout Plan (ALP) are just that – plans, and may change. The airport owner must be allowed to develop the airport as it sees fit without obligation to lessee and regardless of the lessee's desires or



views without interference or hindrance. Therefore it is imperative that the airport owner retains the right to terminate an existing lease when necessary for airport development.

## Through the Fence Agreement

A through-the-fence (TTF) agreement (lease) authorizes a person or entity to access the airport from adjacent, privately owned property. The obligation of an airport owner to make an airport available for the use and benefit of the public does **not** impose any requirement to permit access of aircraft from adjacent property. The FAA recommends, in FAA Order 5190.6A, *Airport Compliance Handbook*, paragraph 6-6d, that airport owners refrain from entering into this type of agreement.

The FAA's Chicago Regional Office, in a January 31, 2001 response to a proposed Wisconsin airport TTF, stated, "The potential safety, security, and regulatory problems associated with through-the-fence operations are FAA's major concerns." They went on to say that, "... from a legal perspective, FAA is concerned that property owners (from the proposed residential through-the-fence development) and the courts may view the access to the airport as a property right that could not be taken away without compensation."

The FAA's Western Pacific Region addressed TTF in their newsletter, *AirporTopics*, in the February 2001 issue. They said, "It is FAA policy to strongly discourage any agreement that grants access to public landing areas by aircraft normally stored on adjacent property. Airport owners must guard against any through-the-fence operation that can become detrimental to the airport and threaten its economic viability. Any agreement for a through-the-fence operation must include provisions making such operations subject to the same federal obligations as tenants on airport property."

TTF that permit aircraft to gain access to a public landing area introduces safety concerns along with other hazards that complicate the control of vehicular and aircraft traffic. Today's increased security concerns and potential risks are additional points that must be considered.

It is recognized that the existence of such agreements is an encumbrance upon the airport property. Airport improvements designed to accommodate access to the airport landing areas from an off-site location for the sole benefit and convenience of an off-airport neighbor present a substantial and continuing burden to the airport owner. The airport owner must contend with legal, insurance and management implications. At some point it may become a challenge to balance airport needs with the increasing demands on the airport by off-airport users.

BOA position is to oppose any TTF agreement and cites the following as a basis for its position:

- Practical consideration  
“The development of aeronautical enterprises on land uncontrolled by the owner of the public airport can result in a competitive advantage for the “through-the-fence” operator(s) to the detriment of the on-airport operators.”  
FAA Order 5190.6a, Chapter 6, paragraph 6-6b
- Safety consideration  
“Arrangements that permit aircraft to gain access to a public landing area from off-site properties complicate the control of vehicular and air traffic ...”  
FAA Grant Assurance 19a
- Land use consideration  
“Residential housing is ... the use most incompatible with aircraft operations.”  
WisDOT’s *Guide for Land Use Planning Around Airports*, Section 2, paragraph 2
- Security considerations  
The Transportation Security Administration (TSA) suggest the following in Security Guidelines for General Aviation Airports, May 2004.

### 3.3 Hangars

“TSA recognizes that ... all hangar/personnel doors are secured when unattended.”

### 3.6.2 Airport Tenant Facilities

“Airport operators should ... assure that any security procedures or systems do not conflict or **leave gaps**.”

### Appendix E, Access Points

“... access point type and design may be the determining factor in effectiveness of the security boundary and control ... the number of access points should be minimized and their use and conditions regularly monitored.”

“Any access point through a fence or other boundary should not only be able to control or prevent access, but also differentiate between an authorized and an unauthorized user.”

“Regardless of boundary location or type, the number of access points should be minimized for both security and cost efficiency.”

The BOA recommends that every Wisconsin airport establish a position on TTF agreements regardless if they currently have or anticipate having a TTF in the future or not.

Secondly, we recommend that if your airport currently has TTF operations without the benefit of an agreement and your position is to continue allowing TTF operations that you implement a TTF agreement as soon as practical. If you, the airport owner, elect to establish a TTF agreement we recommend the following be included in that agreement:

#### Term

We recommend that the term for all TTF agreements be no greater than one year. Extensions may be granted on a year by year basis only.

#### Termination

We recommend that all TTF agreements have a termination clause that will allow the airport owner to terminate the agreement. This is vitally important especially with the increased security emphasis placed on all facets of aviation.

#### Lease Transfer

We recommend that each TTF agreement exist only for the benefit of the lessee and that **no** transfer be allowed. Further, the privilege of accessing the airport via such agreement may not be extended to others at the discretion of the airport owner.

#### Rate

The airport should establish the rate for access to the airport at least equal to the current land rental rate for airport property. The TTF proponent should be required to finance any necessary improvements and maintenance of the facilities and infrastructure connecting the adjacent land to the airport's landing area. Any use of airport or sponsor funds associated with a TTF access would be considered revenue diversion.

#### Reversion

The agreement should include the requirement that all costs associated with a termination of the TTF agreement will be born by the lessee.

Through-the-fence operations have been and continue to be the bane of well-intentioned airport owners across the country. Some TTF agreements do serve the lessee, the airport, the airport owner and thus the public well. The BOA cautions every airport owner to study each TTF on its own merits. The airport owner may deny any TTF and is not required to approve one simply because there already exists one, or more, TTF on the airport.

## Agricultural Leases

Advisory Circular, AC150/5200-33A, *Hazardous Wildlife Attractants On or Near Airports*; revised January 30, 2004, significantly changes the guidance that the Federal Aviation Administration (FAA) has provided in the past. We encourage every Wisconsin airport owner; especially those of Part 139 Certificated Airports, that are now, or that may in the future be, conducting agricultural operations on their airport to first study this new Advisory Circular.

The FAA, in other references, state that agricultural crops may be grown on airport property even when that property was purchased with Federal (grant) funds. (See the Great Lakes Region, Policy and Procedures Memo, Airports Division, 5190.6, dated June 14, 1994 for additional information.) They go on to state that, "A common concurrent use is agricultural crop production." That privilege brings with it certain responsibilities for both the airport owner and the lessee. The airport owner is required to maintain a fee/rental structure that will make the airport as self-sustaining as possible. (See Airport Grant Assurance 24, Fee and Rental Structure and paragraph 4-14A of the FAA Order 5190.6A, Airport Compliance Handbook for additional guidance.) The land rented through an agricultural lease should be rented at the fair market value (FMV).

The lessee must adhere to all provisions of the lease and any applicable airport rules and regulations.

The airport owner should address the following concerns, as appropriate, in the lease document:

- Location and height of crops relative to Part 77 Obstruction Surfaces Areas to be kept free of any crops or farming equipment include the Transitional Surface, Runway Safety Area, Object Free Area and the Obstacle Free Zone. Consult the FAA Crop Clearance Chart, published by the FAA's Great Lakes Region, included as an Appendix to this document, when drafting the agricultural lease.

The airport owner may want to consult with the FAA's Airways and Facilities Division regarding farming operations near Approach Light Systems, approach aids, or navigational aids during the development of the lease.

- Ingress/egress of equipment to leased areas  
The airport owner may require that the lessee obtain permission from the airport manager before entering the airport or the leased area. Routes to and from the leased area should be detailed. Security concerns – closing and securing of access gates should also be addressed.

Attention should be given to routes for farming vehicles. Contamination of taxiways, parking ramps and other access ways may result from travel after fieldwork in wet or soft soils.

- Temporary storage of equipment  
Parking or temporary storage of equipment in leased areas as well as any other area of the airport needs to be addressed. No equipment, of any type, may be parked, stopped or left standing within the Primary Surface Area, Transitional Surface, Runway Safety Area, Object Free Area and the Obstacle Free Zone, or approach areas.
- Wildlife attractant qualities of crops  
Certificated (part 139) airport owners that now allow or propose to allow on-airport agricultural operations must have a review of that proposal by a wildlife damage management biologist. This new requirement is detailed in Advisory Circular AC150/5300-33A, paragraph 2-6.
- Mediation of damages to airport surfaces  
The agricultural lease should address recourse if the lessee were to damage any airport surfaces. Damage can take many forms from causing ruts in soft turf to leaving Foreign Object Damage (FOD) on airport ramps or taxiways.

## References

1. Advisory Circular AC150/5190-5, Change 1  
<http://www2.faa.gov/arp/Acs/5190-5A1.pdf>
2. Federal Aviation Administration Airport Sponsor Grant Assurances  
<http://www2.faa.gov/arp/pdf/assrnap.pdf>
3. FAA Order 5190.6A Airport Compliance Requirements  
<http://www1.faa.gov/arp/publications/orders/5190-6a.pdf>
4. Guidance to Prevent Exclusive Rights and Establish Commercial Business Standards at Your Airport  
<http://www.awp.faa.gov/ops/awp600/airtopics/txt/may00.txt>
5. Policy Regarding Airport Rates and Charges, Policy Statement, Docket No. 27782  
<http://www1.faa.gov/arp/pdf/rates1.pdf>
6. Guidance for Leases, Use Agreements and Land Releases, Policy and Procedures Memo, Great Lakes Region, Federal Aviation Administration  
[http://www1.faa.gov/arp/agl/pub\\_ppms/5190-6.pdf](http://www1.faa.gov/arp/agl/pub_ppms/5190-6.pdf)
7. Hazardous Wildlife Attractants on or Near Airports  
<http://www.faa.gov/arp/ane/forms/5200-33.pdf>
8. Wisconsin Guide to Airport Administration; Chapter 10, Minimum Standards, Rents, and Leases. Published 2000 by the WisDOT  
Available free from the Wisconsin DOT Bureau of Aeronautics.
9. Minimum Standards for Commercial Aeronautical Activities  
Wisconsin Department of Transportation